

McCLELLAN MEETING MINUTES

March 20, 2002, 6:30 p.m.

**McClellan Restoration Advisory Board Meeting
North Avenue Elementary School, 1281 North Avenue, Del Paso Heights**

RAB Members in Attendance:

Gary Collier, Community Member
Kevin Depies, CA Department of Toxic Substances Control (DTSC)
Bill Gibson, Community Member
Paul Green, Community Member
Carlota Gutierrez, Community Member
Joe Healy, U.S. Environmental Protection Agency (USEPA)
Alan Hersh, McClellan Park
Katy Jacobson, Sacramento County Local Redevelopment Agency (LRA)
Rick Solander, Air Force Base Conversion Agency (AFBCA)
Kevin Spesert, Congressperson Ose's Office
James Taylor, CA Regional Water Quality Control Board (RWQCB)

Welcome

Marie Rainwater, the meeting facilitator, welcomed all attendees to the McClellan RAB meeting. Ms. Rainwater reviewed the RAB ground rules.

Agenda and Meeting Guidelines

Ms. Rainwater previewed the agenda, meeting guidelines, and handouts.

RAB Members and Other Introductions

The RAB members introduced themselves to the public. Roxanne Yonn, Public Affairs Specialist, URS, introduced guest presenters and staff.

Potential Pilot Project: Privatized Cleanup of a Site

Paul Brunner, McClellan's Base Realignment and Closure Environmental Coordinator, stated that this is the first dialogue with the community on the subject of privatized cleanup projects at McClellan and that there will be other opportunities for public input on the subject before any projects are implemented. Mr. Brunner presented an overview on what privatized cleanup is and how it works (see Attachment 1).

Katy Jacobson, Deputy Director for the Sacramento County Department of Military Base Conversion, presented the County's strategy for early transfer of McClellan with privatized cleanup (see Attachment 2).

Joe Healy said the USEPA looks to the Air Force as the entity that is ultimately responsible for cleanup of McClellan. The USEPA is open to exploring other possible avenues for completing the cleanup. He said the USEPA would need more information

before a privatized project reaches formal proposal stages, as Mr. Brunner and Ms. Jacobson also pointed out in their presentations.

Mr. Healy stated that EPA would want the responsibilities of all parties to be clearly spelled out in advance. At this time, USEPA does not know what type of agreement document might be necessary to do this.

Mr. Healy said the CERCLA process would continue to be followed no matter how the cleanup is conducted. He said in a privatized cleanup, the Air Force would still have the responsibility to select cleanup standards. CERCLA also requires community input.

Mr. Healy said the USEPA is open to working on a pilot privatized cleanup project that would reduce cleanup time and cost.

Kevin Depies said the State also supports a privatized cleanup project as long as the CERCLA process is followed. He said the Air Force has done a good job with the cleanup of McClellan to date, and Air Force officials have worked well with the regulatory agencies throughout the process.

Mr. Depies said the responsible party for the privatized cleanup would have to sign an agreement with the State stating that the site would be cleaned up to acceptable levels. The responsible party would also have to pay for the regulatory oversight. He said the State does not want to see funding taken away from another facility's cleanup program to fund a privatized cleanup project at McClellan.

Mr. Depies said the concept of a pilot project sounds like a good approach to see if the process works.

James Taylor agreed that the CERCLA process would need to be followed. He is also concerned about the impact on his agency's resources. He said the process of working out the agreement to proceed could be complicated, since such a project has not been performed at a Superfund site in the past. He said he would like to see an assessment of the impact on the rest of McClellan's cleanup program if such an effort were undertaken. If it all works well, the State may be willing to agree to another privatized project.

RAB Discussion

Following is a table of questions and comments from the RAB and public and the responses provided at the meeting. Follow-up responses are being prepared by the appropriate agencies and will be provided at the May 21, 2002, RAB meeting.

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		Comment/question	Response provided at RAB meeting
RAB Comments			
1.	Gary Collier	Would the developer be doing the physical cleanup and will that be part of the contract?	Katy Jacobson: No, the developer will not perform the cleanup. The Team that has been proposed includes actual firms in this industry that have performance history that the County can evaluate.
2.	Gary Collier	Will the developer be excluded from having financial interest in those companies?	Katy Jacobson: We have not built the business transaction. That is Step 3-4 in our due diligence.
3.	Bill Gibson	It is my understanding that, in early transfer, different parcels will be transported at different times from different locations on McClellan. Who will be responsible for integrating their efforts to make sure they stay on track, the LRA or the Air Force?	Katy Jacobson: We are proposing a single parcel to start with. We have not gone beyond that.
4.	Bill Gibson	If we get to transfer early, will the process equipment be transferred also, and who will operate and maintain it?	Paul Brunner: That would be dependent on the parcel if there was any equipment to transfer. Since we have not selected the site, we have not tried to work through that. We would look towards the County to maintain that contract with the developer. The Air Force will make incremental payments on the project, so we are going to be checking to see if they are on schedule. The regulators will have a role.
			Kevin Depies: The regulators will also be participating in making sure they stay on schedule.
5.	Carlota Gutierrez	Have you identified potential sites for transfer? Do you have a priority?	Katy Jacobson: We have talked about it. We are trying to take it step-by-step. Does the Board of Supervisors want to pursue this initiative? We have some concepts in mind and some parcels we may want to attack, but we have not made that decision now.
6.	Carlota Gutierrez	Would it be highly, medium-level, or low-level contaminated, and is there a gray area?	Katy Jacobson: That is a key element. There will be some sites that we will not want to take on because the contamination is too complicated, too in-depth, too much risk. We are looking to choose a parcel that makes sense to both sides of the transaction, one that we think we can clean up faster. The County is concerned about public safety and health, so we will be looking at that as an element of the site we choose.

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			Paul Brunner: There is a factor here on how big an effort the County wants, because the property that is chosen for a Finding of Suitability for Early Transfer (FOSET) will have to pass the FOSET criterion to transfer it early. Currently, the Air Force is pursuing a FOSET for a large-sized property, called the "Initial Parcel FOSET," to move property to the County. It is 500 acres with a lot of sites. Originally, when we embarked on this over a year ago, we thought it was going to be simple. It turned out not to be all that simple to get to the FOSET. You need to be careful not to bite off too much trying to get to the FOSET. We are working on that now, and our goal is to get to the FOSET by the end of 2003. It is not a funding restraint. The Air Force has to do the FOSET, even under the privatized area. Maybe there are ways to make that happen faster, but we are moving fast now.
7.	Gary Collier	Just up this street there is a plume of contaminants. Is this privatization going to set back the initial phase of cleaning that up? That neighborhood is depressed because, in addition to other factors, it has that plume. It seems that the City of Sacramento should be able to get their area cleaned up as well. How is that going to be impacted?	Paul Brunner: From our perspective, it would not impact that. That would be one of the more "high risk" sites that the Air Force is committed to doing. It would stay in the Air Force's budget. We would continue to fight in our own budget stream beyond the privatized effort to make that happen. We would make that a priority over a pilot privatization project. To pursue the pilot privatization effort, we need to find some other sources of funding and not take from the budgets of other bases.
8.	Paul Green	In Paul Brunner's presentation, he talked about the transfer of property, what "privatized" is, and so on. You said that there is a secondary transfer that is authorized from the LRA to the developer. Is there an opportunity for the LRA to divest itself from this once it is transferred?	

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9.	Paul Green	<ul style="list-style-type: none"> • Another comment says, "It is expected to fix and reduce the Air Force's cost in time of cleanup." Why or how? • If it can be done over here, why can it not be done through whatever we are doing now? • What are the benefits? • Early transfer of ownership and cleanup allow sale of property that generates additional tax revenue. I would suggest that we look at a time and cost analysis. How much time are we willing to give up for a certain amount of money? • Does it, therefore, make it worth all the administrative process? • There has to be an analysis to show that the time and money do match. 	
10.	Paul Green	<p>There are a couple of drawbacks:</p> <ul style="list-style-type: none"> • Will pilot project meet expectations? • Would these dollars be transferred from our expected income? • If they are, is there any matching dollar amount that we would have to spend to make this work? • If not, and we opt against it, is there an opportunity for us to access this money to do it in the same way that we are doing it now? 	

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11.	Paul Green	Sometimes, when you get a grant, a certain amount of revenue must be placed forward by the grant requestor. The grant that we are doing may require us to spend revenues that we have already gotten for cleanup in an administrative manner or something of that nature. For point of information, I agree with Gary Collier's first two inquiries about how the impact would come out on the general fund. The transparency of the creation of LRA teams and stakeholders, with the LRA being the County Board of Supervisors and you being the BEC with the Air Force, what would be the difference in terms of what you would do differently from what the LRA would do in a management position?	
12.	Paul Green	I assume there is no precedent for regulatory agreements, somebody said there was just one. Are we not only going to be a pilot, or actually the beta pilot program? If we are going to be the beta site for this nationwide with no precedent set, how difficult will this be for us to move forward?	Paul Brunner: There are other privatized efforts. Mare Island was a privatized effort. The US Air Force does not have a privatized project yet; there is another site outside California that we are looking at that has not yet been done. The difference that I was making on that comment was that I am not aware of any NPL site. "NPL site" means that you are dealing with more than just the state agencies. You are dealing with the federal agencies, including the USEPA, and that brings up different issues that we need to explore. There are templates, but not templates that address the entire picture here.
13.	Paul Green	While we are looking at that activity, is that going to delay anything else? You have a finite staff to work on the things that we have already said are important to us.	

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14.	Paul Green	<p>"Early transfer of Contaminated Property, Air Force and Regulators." We are dealing with contaminated property with little reuse value. The County will benefit because this will be on its tax roles. What is the benefit to McClellan Park and to the community? The benefit that I can see is if the money that the County gets remains here within the McClellan Park area. I do not know what the LRA does with its money; it could go into the general fund and be dispersed, or it could come directly here to represent this community. I think it is something that could be asked.</p>	<p>Alan Hersh: For the community, we can take some of the sites that maybe are potential health risks (maybe not the most risky sites, such as CS-10) and simultaneously get those sites cleaned up. The process is the "process," and it is not going to change. It is the CERCLA process. What could change is that once it is privatized, then it is a private entity, and we like to think that a private entity could somehow do it a little bit faster than the government entity.</p> <p>We are not concerned about national precedents; we are not concerned about a lot of things. Before we even get to that point, the methodologies, the milestones, the cleanup levels, and what it is we are doing, have to be defined and documented in about 7 or 8 different legally binding agreements. How do we get there in the most effective way? It would be with a "cost, fixed-fee" contract. I think there are a lot of benefits, and we will be working together for quite a bit of time, and as involved as anyone wants to get. It truly benefits the community. As far as the money staying in the community, it will flip the property from this lease status, where the County is only able to tax its leasehold interest, into a "fee" basis. So all of a sudden there is more money for the redevelopment area, which is McClellan from Antelope down to Roseville Road (it includes 20% set aside for housing). It will put more money back into McClellan just in jobs created through the cleanup and so forth. There are a lot of benefits. All of the questions are the same questions we are asking ourselves as we go through and explore. That is the reason the County has retained legal council to say this is prudent for the County to do. And that is where we are today. One of the other things we look at is the regulators and this group of folks that they see all the time; they can read only so many documents. Perhaps through this we can get more regulators here reading more documents. Things are going to happen faster just with more hands working on this. We will have more people, more entities able to produce those documents. There are a lot of benefits, a lot of risk, a lot of "ifs." We need to challenge those "ifs" if we are going to change things and get to the end of the day faster.</p>
15.	Paul Green	Is there any reason that the governor or the USEPA would not concur?	

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16.	Paul Green	I have heard the generalized briefings, and I know that we have a litany of things that we must go through, but is there a precedent set for non-concurrence?	<p>Joe Healy: I could answer one issue that was common to both Paul Green and Gary Collier and has come up a couple of times; that is the question of the developer's role in selecting and conducting the cleanup. The question or fear is whether they would do a good job or, do they have another interest? USEPA's belief, from what we can guess what such a proposal might be, we think the Air Force will be selecting the remedy and the cleanup standards just as they are now for their other properties. The regulators and USEPA would have the same roles as we do now, and we would need to approve and concur that the remedy was protective of human health and the environment. That is the process that the public would be involved in under CERCLA, and we believe that is set. After you have the decision of what you clean up, what technology you use and how clean you make the property, we would be there to verify that they have, in fact, met the cleanup standards and the Record of Decision. The fear that the developer might be able to select some easy way out does not play under CERCLA, as far as we are concerned.</p> <p>Kevin Depies: It does not matter if it is a private party or if it is the Air Force - they are going to follow the same process. The agreement will be set up so that it is followed that way, and in the ultimate worst case, the Air Force will take liability.</p> <p>Paul Brunner: I am not going to disagree with any of the comments made. As we go through the various agreements, the CERCLA process will be followed. We will have the regulatory agreement, the agreement with the LRA, and the terms and conditions on how we will do things, and who will do what will get spelled out. I am not sure if it will be the exact models we have today. The Air Force's goal is to try to lower our overhead in management of this process. If we were to do this and really turn it over to the County and LRA for a privatized process, that does not mean that the Air Force would withdraw totally from the process. But there has to be some objective that our role changes.</p>
17.	Paul Green	Is there something that we can go back to and use as a checklist that says we've got to make sure that over, and above the generalized things, this caused this to fail, this caused this to be delayed in some other place, to speed up our process.	
18.	Paul Green	Under enforceability, is the work scope to be defined specifically at the outset on this particular project?	
19.	Paul Green	The reason I ask this question is that we were going along very well. The work scope was there, cleanup was being done, and then we found plutonium. If that is outside the work scope, how does it get added in?	

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20.	Paul Green	The idea of multi-year funding was very high for me because that insures that we have the ability to move on.	
21.	Paul Green	But when I look down at the due diligence team, even though the RAB is going to remain in its current position, I do not see any community representative on the team. Everyone who is on this due diligence team has a vested interest in moving the project forward one way or the other and at one speed or another. I would ask that you would evaluate whether or not there should be a dedicated community member. Someone spoke about the need to meet the USEPA's requirement that the community be involved, not only in the actual discussion of the cleanup, but that they be involved in the technology that is used. I do not know if that is fully integrated into this, and it may not be if we leave the makeup of that committee that way it is.	
22.	Gary Collier	I agree with Paul Green in terms of public involvement on the other due diligence team, and I would like to inquire whether the LRA will be using the Air Force's list of people involved rather than using their own, which is fewer. In the past, we have had a problem with people not getting notified of certain things happening. We are still waiting for the County or the FAA to have a hearing on whether we are even going to have an airport. Certain environmental processes have been tweaked, changed, and pushed to the limit in terms of public involvement, trying to even determine whether there is even going to be an airport. We were told we were going to have a hearing, and we are still waiting for that hearing. We are told, "We already made that decision." And then we hear we are going to have a hearing to deal with the environmental impacts. We still have not had that hearing, unless I was asleep for a year.	Katy Jacobson: We hope to use this RAB to continue the public participation process that has already been developed and has been so effective. There is no intention to do other than that. We may do additional community outreach.
23.	Gary Collier	Any agreement that is made has to adopt the standards that the federal government has used, not limit public participation, including mail-outs.	

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24.	Alan Hersh	To echo the state, the groups of individuals from the Air Force and the regulators that have been working on this project really have done a good job, and there really is not an issue with that part of the process. What we and the County are looking at is whether there is a comprehensive program or something innovative or different that the County can undertake to move this along faster. Despite people's best efforts, dates are slipping. If the dates keep slipping in the current program, the processes and this cleanup are going to go on for a long time. Every year we are going to go back to Congress fighting for more money. What the County is doing at this point is simply undertaking a due diligence to say that the privatization is a new concept, only 5-10 years old. It seems to be working. As Paul said, perhaps not at an NPL site, but it is at other sites, Mare Island, and it looks like it will happen at Alameda and Lowry. It seems to be working, and it seems to be a process that's able to get the ball moving quicker, cleanup moving quicker, property put back into productive use, and tax rolls increasing faster. It is something that we should explore with all diligence and thoroughly.	
25.	General	Regarding Funding	Alan Hersh: In addition to that, how do we get more of the spotlight on McClellan, get more certainty of funding, and get cleanup happening faster? Hiring a Washington firm to do lobbying is very expensive, and the County is committed to doing that to see if we cannot get more attention. There is a war going on, and money is going into bombs and those types of things, it is not going into closed bases like it was. We are trying to figure out how we work together to get more money here. The County has been very clear; there cannot be any exposure to the general fund. Rather than have additional liability, the County would like position to assume to have less liability when it is finished.

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26.	Paul Green	<p>I see a clear demarcation line here. As Alan Hersch has gone through, I have no objection to anything he has said. But the demarcation says how does it function from implementation forward. And the other line says, "What is the public perception?" And what I see is skepticism in the public as I sit on that Toxic Vapor Extraction Committee at the County PA. The main thing is that everything that someone within the government who was in the structure says, irrespective of the rules, is questioned with disbelief as the motivating factor. Well, how do we know they are going to do this, how do we know they are going to do that? And that is the reason I would suggest that as we look at working with the public, the public should be in on the ground floor and should understand exactly what is proposed. And not necessarily in a small meeting, such as this, but meetings that go into the details. That is all I was attempting to come forward with.</p> <p>On the broad scale, I do not see anything wrong with seeking to look at a privatization. I just think that those types of things that I have asked may need to have some clarification because if I can ask them, as a member of the public, someone else will be asking.</p>	
27.	Bill Gibson	"Early Transfer: The transfer of the property takes place." Is this just the surface rights, or does the LRA get everything that is below the ground?	Paul Brunner: If the property that is FOSETed is over contaminated groundwater, I think we can protect people and have restrictions in the FOSET.
28.	Bill Gibson	The Air Force transfers the property, and there are certain cleanup responsibilities. What if the new owner digs down, starts to build a building, and finds some odd shaped barrels and funny looking things like that? Does this go back to the Air Force, or has this person spent money, and then he has to spend more money that he has not anticipated?	Paul Brunner: If there is something that is found in the ground that was unknown, it really depends on what is found. As the arrangements are made between the Air Force and LRA, it is our intent to try to minimize the risk and liabilities that go from us to them. There are, undoubtedly, going to be exceptions. If we find something like CS-10, a radiological-type issue, then (to my understanding) that would be one of the things that would kick it back out where the Air Force would then come back in. Our goal here is to move whatever we can to the responsible party that wants to do it, and give them all the opportunity to do it. This is yours, you wanted this parcel, do it, and do it for a certain cost on this property. It would be the Air Force's goal to move it that way and not build a lot of loopholes for someone not to clean it.

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Public Comments			
29.	Willie Mincey	My comment is in regards to the process. I hear everybody saying how great the cleanup is going. Everybody seems to be pleased. If it is going so well, why do we need changes?	
30.	Willie Mincey	In the last meeting they talked about funding and priorities. They said the priorities are basically coming from the County, LRA, and the developer. They also said the priorities were coming from the RAB, but I never heard any priorities talked about. This pilot process seems to be about priorities. Money is short, and it seems that that is what it is about - priorities.	
31.	Willie Mincey	My concern is that when you are short money, you are basically going to be vying for resources (do we get ours fully funded, do we fund yours), especially when it is the same people talking about priorities.	
32.	Willie Mincey	My second point is in regard to the privatization that we have had. Basically, McClellan has gone through privatization-in-place and I see that, obviously, we are not successful in that. I remember software development was a part of the project, and it fell through, like a rock. And the reason is, as I see here, here is a process you are talking about, the federal government still has all of the responsibility, and you have a federal staff, and you are bringing in a private company, and all of the responsibility for everything is still with the federal government. It seems that you have another layer of management. If it is all of our priorities, I understand that the developer would like to have it this way, and in terms of money, it is the same people, and we need to probably clarify that together. When we get down to it, privatization-in-place, unless anything else changes, is going to be a question of if the federal government still has the responsibilities. I am just concerned about the layer of management.	

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33.	Janis Heple	It has been interesting tonight hearing the concept, and I somewhat understand the desirable features of it. I have comments, actually a question, on some of the things brought up by Gary Collier, Bill Gibson, and Paul Green. This is not dissimilar to some of the Brownsfield projects. I have always thought, though, how does this work financially? I'm assuming that if a developer is coming along wanting to prepare the land for development and they are taking on the cleanup, that that means they have suddenly taken title to the land, and that means they are paying taxes. So they are putting out money paying taxes. They are putting out money preparing the land. This has to be someone with a lot of resources. They are putting out an awful lot of money. I am assuming that what they are getting in return then is an awful lot of money when they turn around and lease it, or however it works, to a business.	

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34.	Janis Heple	<p>My concern is that what we have now under CERCLA is extremely thorough, and I question whether someone preparing land for development is going to be willing to invest that type of money. That goes along with Bill Gibson's questions about the issues regarding groundwater. We know about the project over by Aerojet, Carveout Lands, where the groundwater would definitely be off limits. That is really part of that stipulation. What happens if there is an emergency of a magnitude that does not fit within the economic framework the developers selected? Stepping back, I am talking about assumptions I have, and I would really like it if, maybe Katy Jacobson, you could be more explicit about a real simple schematic about how this type of thing works.</p> <p>(Bill Gibson: I have worked with Janis Heple over at Aerojet; I agree with her.)</p>	<p>Alan Hersh: It is similar to Brownsfield, although this is now governed by CERCLA, which brings in Joe Healy and federal EPA and a lot of different legislation and statutes. How it works, financially, and there is a negotiation with the Air Force and Department of Defense. We go through this due diligence process we think is prudent, and then we select a site or a pilot project. Once that site is selected, then there are a lot of discussions and meetings, and the Air Force ultimately selects the cleanup remedy for that site. And then that cleanup remedy is negotiated and contractually becomes an obligation. A Record of Decision is actually processed for that site, for those cleanup problems. Through that process, there would be negotiation with the Air Force on the privatization for the cost of doing that, and that negotiation is a "fixed fee" negotiation. So if you take a site, and we end up settling at "\$10.00" to clean up a site, and there is this Record of Decision, that is what we have to do to clean up that site. If, in fact, you go down and you find some unexpected contaminants, you are expected to cover it within that \$10.00 or that amount of money that you negotiate. As Katy Jacobson alluded to, there is a letter of insurance. First, all of the contractors are doing a worker insurance to complete their contracts. And beyond that there is insurance at the cost above and beyond. Beyond that, as Paul Brunner has alluded to, what happens if there is something unforeseen in the groundwater? That liability, to Gary Collier's question, we go broke, the contractors go broke, the contractor's bonding companies go broke, the insurance company goes broke, the cash guarantee goes broke. We have gone through the monies that the Air Force has set up. When we have gone through all of these backstops, and they all fill up, then the property ultimately liability rolls back to the United States Air Force. That is a model, as Paul Brunner alluded to. There has not been a CERCLA site that has been completed, and the Air Force is close to completing a transaction, having completed it somewhere with that model. So with ultimate catastrophic events, the liability goes back to the government.</p>
35.	Gary Collier	<p>But then the County in your scenario is bankrupt.</p>	<p>Alan Hersh: No, not the County. Notice I never said the County. I said developer, the contractors, the bonding companies, and the insurance companies. In fact, through this, there will be indemnification for the County and pretty strict contractual guidelines where the County is acknowledged by the government, but they are really just a pass-through and not a responsible party.</p>

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			<p>Paul Brunner: I am not sure that you addressed Janis' question. It was good information. I am not prepared to say how the network will work because the details are not there. I am aware of some of the details that are being worked on in other places. And some of them are contentious for the issues that you have raised. Potentially, that is why they are not worked out yet. As to what are those details, what are the arrangements, who does pay—everyone definitely wants to limit liability and payment when you go to negotiate a deal. So I really do not know what it will be. I think all parties will seek to try to work together to make it best for everyone. And if we open it up to the public, like we are doing here with this dialogue, you will see that as it unfolds. I do not think we know all those answers.</p>